



Part 2 of 2

MAJORITY RULE AND MISRULE

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IV. THE SOLUTION IN PRINCIPLE

Let me begin by pointing out that, on any sound conception of human or natural rights—rights which belong to all men equally—we must be very careful in the use of such phrases as “majority rights” and “minority rights.”

If we are speaking in normative terms about the rights which men ought to enjoy, there can be no majority or minority rights. If they are genuinely and legitimately rights, they belong to all and should be enjoyed by all.

If we are speaking in factual terms, we can refer to certain rights which belong to all but which at present only the majority enjoy; and we can also speak of minority rights as rights which belong to all men but which the minority does not yet enjoy.

Next, let me define a completely just constitution, whether a written or an unwritten one, as a constitution that recognizes and protects all human rights and which thereby makes unconstitutional any violation, invasion, or transgression of these rights by acts of government.

It makes no difference whether this is achieved by a bill of rights, by constitutional amendments, or by legislation, if the ultimate effect is the same—namely, that no act of government can violate the rights chartered by the constitution without being reversed on the grounds that the act in question is unconstitutional.

The reversal may be accomplished by a judgment of the courts or in some other way. However it is accomplished, it must have the effect of preventing a constitutional government from violating the rights that the constitution has proclaimed inviolable and unalienable.

Given the foregoing conditions—constitutional government with a perfectly just constitution, one that provides for the protection of all natural or human rights—it is possible to have majority rule without majority misrule.

The constitutional provisions that prevent the majority from misruling would simply limit the power of the majority; it would not abolish majority rule in so doing. It would limit majority rule, as constitutional government is itself limited, by the line that separates constitutional from unconstitutional acts or enactments.

An unconstitutional act by the majority would be reversible by a judgment of the courts or in some other way.

Recent court decisions in the United States have declared that it is the function or duty of the courts to protect the minority when it lacks sufficient power to protect itself in the legislature.

(Two examples of this: the U.S. Supreme Court decision in *Brown vs. Board of Education of Topeka, Kansas*, against separate but equal educational facilities for blacks and whites; and the decision of the California Supreme Court requiring taxes paid for public education to be spread evenly over all districts in the state, thus creating equal educational facilities in both the comfortable middle-class communities and the ghetto communities.)

All that I have shown so far is that majority rule in a constitutional democracy can, in principle at least, be so limited by constitutional provisions that when it operates within constitutional

limits it never violates human rights; and so there is no majority misrule and no oppressed or unjustly treated minority.

If we turn from this ideal solution to constitutional democracies as they exist today, we are at once struck by the fact that there are oppressed minorities, minorities which regard themselves as deprived of rights they should enjoy, and hence as unjustly discriminated against in a society in which a majority appears to enjoy those rights as well as additional privileges.

For the sake of brevity, I am going to oversimplify the situation by describing these constitutional democracies as societies in which a fair measure of political equality and a just allotment of political rights have been achieved (in other words, they are *political* democracies); but they are also societies in which economic equality has not been achieved and in which there is still a sizeable minority deprived of their economic rights (in other words, they are not *economic* democracies).

In these societies, it is the majority that enjoys the economic rights of which the minority is deprived; and, in addition, that majority enjoys economic privileges which make it reluctant to adopt the constitutional measures needed to prevent the injustice done to the minority in the economic sphere.

Under such circumstances, it is difficult to see how the oppression of the minority by the majority can be prevented, since the constitutional protection of the minority in the sphere of economic rights cannot be achieved without the consent of the majority.

Furthermore, until the constitutional protection of human rights is enlarged to include economic as well as political rights, the courts cannot act in behalf of the minority.

So long as the injustice done the minority in the economic sphere is not made unconstitutional by a declaration of inviolable rights in that sphere, the courts cannot prevent the majority from ruling in its own interests and in favor of its special privileges, at the expense of the minority.

We are, therefore, compelled to ask what chance there is that the majority might be persuaded to enlarge the constitutional bill of rights to include the economic rights which they now enjoy, so that the minority might share in the enjoyment of these rights, and to move in this direction even though this action on the majority's part might result in some attenuation of their privileges.

That question, upon examination, is tantamount to asking what chance there is of establishing, by legal or constitutional measures, not by revolutionary violence, a truly classless society—one in which the equality of conditions that Tocqueville identified with democracy would prevail in the economic as well as in the political sphere.

Madison, it will be recalled, thought that this remedy for factional conflict between the haves and the have-nots was utterly fanciful. Thinking it impossible to remove the causes of factional conflict, he settled for what was only second best; namely, mitigating the effects of factional conflict, particularly the tyranny of the majority when, in his time, the poor or unpropertied constituted a majority.

The problem of majority misrule with which we are confronted in our day arises from a conflict of factional interests between a privileged majority and oppressed minorities.

And that conflict of factional interests, in turn, arises primarily from economic inequalities which generate political inequalities in their train.

I return to the question: since the power to change our institutions lies in the hands of the majority, what chance is there that the majority might be persuaded to adopt the legal and constitutional reforms needed to establish a classless society from which factional conflict between a privileged majority and an oppressed minority is removed?

The answer to that difficult question depends in part on how we conceive the equality of conditions that is essential to a classless society. It must be conceived in a way that is practicable, not chimerical or utopian.

I am, therefore, going to try to state for you my view of the only practicable way in which an equality of conditions can be achieved, and with it a classless society, or at least one devoid of factional conflict between social classes.

V. THE CONCEPTION OF A CLASSLESS SOCIETY, OR ONE DEVOID OF FACTIONAL CONFLICT AS THE RESULT OF AN EQUALITY OF CONDITIONS

Preliminary qualifications

A society without some distinction in social classes may be impossible, but the existence of social class distinctions need not involve serious factional conflicts, even between racial and ethnic groups.

The minimal conception of a classless society calls for an equality of economic as well as political conditions. With this accomplished, the society would be classless in the sense that there would be no classes engaged in factional conflict over inequalities.

The removal of factional conflict between majority and minority groups would not result in unanimity on all matters of public policy. There would still be a division of opinion between a majority and one or more minorities, but that division of opinion

would not be on questions of justice or what is for the common good of all, but rather on questions of expediency—questions about which of several alternative means should be employed in order to do justice and serve the common good of all.

On such questions, when they are extremely serious as, for example, questions of foreign policy or issues of war and peace, the requirement of a two-thirds majority instead of a simple majority to decide the matter would give the voice of a minority weight out of proportion to its actual numbers.

With these preliminary qualifications stated, I turn to the issues of equality and inequality which lie at the heart of the matter.

I submit that we cannot resolve these issues without appealing to a distinction that is either unrecognized or ignored—the distinction between qualitative and quantitative equality; or, what is the same, between equality in kind and equality in degree.

The egalitarian solution of the problem calls for the removal of all inequalities—inequalities in degree as well as inequalities in kind.

In my judgment, the egalitarian solution is chimerical, unfeasible, impracticable. It cannot be made to work. If the establishment of a classless society depends upon trying to make the egalitarian solution work, its day will never come.

The only chance, slim as it may be, of persuading the majority to move in the direction of a classless society, and the only chance of its ever being realized, rests on the understanding that quantitative inequalities must be tolerated because they cannot be removed even if that were desirable. Such inequalities in degree can, however, be combined with equalities in kind. *Let me explain.*

Quantitative equality consists in having the same amount of wealth or political power, or of any other condition that makes a significant difference to men in their political, economic, and social relationships.

To insist upon quantitative equality, therefore, is to demand that men shall not be unequal in any significant respect—and not in the slightest degree.

Allowing no inequalities to remain, egalitarianism aims at complete levelling.

The crucial point about qualitative equality, in contrast, is precisely that it can be achieved without trying to do the impossible—remove all inequalities. The levelling it aims at is not flat uniformity; for it permits a range of differences in degree above the level at which all men have what every man naturally needs to lead a good human life.

Thus, for example, all men are qualitatively equal—or equal in kind—when they all have the same political status of citi-

zanship with suffrage and the same civil rights; but though all should have the indispensable minimum of political power, they need not all have the same degree of political power.

In fact, it is impossible to achieve a society in which all men would have the same amount of political power. There are societies, of course, in which some men have political power in varying degrees and some are totally deprived of it.

When some men have political power in varying degrees and some are totally deprived of it, you have an inequality in kind, a qualitative inequality, which involves a division of society into opposing classes in factional conflict—the *haves* and the *have-nots*.

It is this political inequality of conditions, with its factional conflict, that democracy attempts to remove; and can succeed in removing by making all men *haves* with respect to political power, even though it can never succeed in levelling all the *haves* to men who have the same degree of political power.

Let me now apply to the domain of economic affairs what we have just learned about qualitative and quantitative equality or inequality in the political order.

In the sphere of economic goods, qualitative equality or equality in kind entails all men having sufficient wealth for the necessities and amenities of life, without levelling all to having the same amount of wealth.

All should be above the poverty line, when that is set absolutely by destitution, or when the poverty line is the line below which men are deprived of goods that are essential to a decent human life.

In the case of political equality, as we have seen, the qualitative solution does not require that all men should have the same amount of political power. So, here, the qualitative solution does not require that all men should have the same amount of wealth. All should be above the poverty line of essential deprivation, but some can be further above it than others.

The essential point, in economic as well as in political matters, is that *all* should have what *every* man needs in order to lead a good human life, even though *some* may have *more* than any man needs for that purpose.

Permit me now a number of comments on the theory of equality which I have just summarized.

First, to repeat what I said earlier, the problem of an equality and inequality of conditions cannot be solved in any other way. The egalitarian solution, in terms of strictly quantitative equality, is unworkable. Hence either there is no solution of the problem, or the solution must be formulated in qualitative terms.

Second, the single most important notion in the qualitative solution of the problem is the notion of natural needs, which are the same for all men as properties of specific human nature, and thus stand in contrast to individual wants, which differ from one individual to another.

The notion of natural needs is essential to the doctrine of natural rights: men have an inherent right to that which they naturally need in order to lead a good human life. They have a right to whatever, by nature, they are obliged to seek for their own real good.

To say, then, that men are treated equally when they all have what they naturally need to lead a decent human life is also to say that they are treated justly when they are thus treated equally, for they have everything they have a natural right to, and more justice than this no one can ask.

Third, the combination of equality in kind with inequality in degree—all men having what they naturally need, but not to the same degree—this combination conforms to the facts about the natural equality and inequality of persons.

All men are equal in kind: have the same specific human nature, the same humanity, the same personal dignity.

All men are unequal in degree, one individual being more or less than another in innumerable respects.

Fourth, it must be acknowledged that we are left with certain residual problems of great difficulty.

What can be done about those who have more than any man needs to lead a good human life—more political power than the basic minimum possessed by all citizens; more wealth, and with it more political power, than is needed for the comforts and conveniences of a decent human life?

These excesses beyond the satisfaction of needs and the acquittal of rights constitute privileges which are often misconstrued as rights.

This raises two difficult problems—a moral problem for the unduly fortunate individual and a political problem for society.

The moral problem for the fortunate individual: excess of power or wealth can be morally distracting if not corrupting. The moral problem is solved only if the excess is used for the common good or at least in ways that do not prevent or impede the pursuit of happiness, either by the individual himself or by his less fortunate fellowmen.

The political problem for society consists in trying to find ways to prevent the excess of power or wealth, above the minimum needed, from being misused—prevent it from injuring others or the common good.

If we cannot find ways to prevent excesses of power or wealth from exercising undue influence; and if, in addition, residual inequalities in degree produce factional conflicts between those who *have more* and those who *have less*, then little has been gained by removing the factional conflicts between the *haves* and the *have-nots*.

We are thus brought to the dismal conclusion that even the establishment of a classless society, in the only way in which that can be achieved, may not provide us with a satisfactory solution of the problem of majority misrule in a constitutional democracy.

This conclusion even detracts somewhat from the ideal solution proposed earlier. Even if a completely just constitution were to protect all human rights, economic as well as political, there would still be privileged and underprivileged groups arising from inequalities in degree, with factional conflicts between them. Minorities might still feel that they were being mistreated by the majority even if, in strict justice, they had no grounds for their complaints.

In the few moments that are left, let us consider what forms of action are available to oppressed or unjustly treated minorities, by which they can attempt to redress their grievances.

VI. ACTION BY DISSIDENT AND OPPRESSED MINORITIES

These forms of action fall into two main groups. On the one hand, there are attempts to redress grievances or rectify injustices by those who affirm their consent to the general framework of the government under which they live. Such attempts will, therefore, be legal or lawful: they will be by due process of law rather than outside it.

On the other hand, there are attempts which, in one degree or another, involve a withdrawal of consent, involve lawless behavior, and even violence.

Let us, first, consider what I am going to call civil dissent proper: lawful dissent, dissent within the boundaries of consent.

The means now available for civil dissent are such things as the exercise of freedom of speech, freedom of assembly, freedom of the press, as well as resort to public petitions for the redress of grievances.

All of these are ways of letting the dissenting minority be heard through channels which are lawful.

If the grievances of the dissenting minority are heard attentively and listened to with respect and sympathy, then there may be some hope that a portion of the majority may be persuaded and a change of policy may result.

(One of the worst, if not the worst, of all the iniquities perpetrated by the present administration of the United States is its intimidation of those who have engaged or who wish to engage in civil dissent by lawful means—intimidation by bugging, by surveillance, and by other forms of duress, together with attempts to gag the press and other media, and an attitude of disrespect or even contempt for minority voices by lumping them all together as threats to national security.)

Not only must a dissenting minority, dissenting by lawful means, be regarded as the loyal opposition and accorded every facility for being heard attentively and with respect, but there may be ways of giving the opposition a chance to register its voice other than by the election of representatives.

For example, it may be possible to use such devices as initiative and referendum or plebiscite to measure the weight of minority opinion on crucial questions of policy or critical changes in the law.

While this in itself would not necessarily bring about a change in the policy or law to which a minority was opposed, it might set the stage for public debate of the issues involved.

If all these measures, and others that might be invented, fail to redress the grievances of the minority, what is left for them to do after having suffered, to use Locke's phrase, "a long train of abuses."

When recourse to lawful means of dissent do not succeed, all the residual forms of action involve, in some measure, a withdrawal of consent by the dissenting parties.

The classic way to withdraw consent, according to Locke, is by emigration to another country. This may be resorted to by individuals or by groups. It was a much more practicable device in the 18th century than it is today, though it has been employed by those who have fled to Canada and Sweden from the United States.

The second form of action, involving a degree of withdrawal of consent, or at least unlawful behavior, consists' in what I call "mass political protest."

Unlike the action of the individual conscientious objector, who refuses to obey a law on moral grounds but submits willingly to the penalty, mass political protest is action by a group and is an effort to achieve some change in law or public policy.

It involves a withdrawal of consent to the extent that the action taken involves breaking a law without any willingness to accept the penalty for such law-breaking.

It is usually accompanied by hopelessness about the redress of grievances through due process of law, and so turns, as a last resort, to law-breaking. Yet, because it is done with the hope that mass political protest may effect reforms, the withdrawal of consent is partial and tentative, not complete and final.

One point is important to observe: the law being disobeyed, a traffic law, for example, or a prohibition of trespassing, need not be itself unjust.

(Comment here on the special problem involved in violating tax laws, if the money is used by the government to carry out policies against which the protest is directed.)

The lawless behavior aims to call attention, not to the law being violated, but to injustice elsewhere in the laws or policies of the state.

Though lawless or unlawful, is such action non-violent or peaceful? Is it as Gandhi claimed, “non-violent resistance to government”?

It may be non-violent, so far as the initial overt action on the part of the protesters is concerned, but is there not always latent or incipient violence present, becoming overt when police or military attempt to enforce the law being broken? (e.g., violence in Chicago at the time of the 1968 convention; violence in sit-ins by students or striking labor unions.)

Mass political protest thus tends toward or verges on riot and rebellion, which is the third and ultimate form of protest.

In rebellions we have political protest that is lawless and violent, both in intention and execution. It involves complete not partial, final not tentative, withdrawal of consent.

Riot is less extreme than rebellion: while lawless and violent, its aim is not to accomplish the overthrow of the established government, which is the aim of rebellion or insurrection.

Rebellion is the end of the road—the last recourse—dissolution of the social contract—open and declared withdrawal of consent—and, as Locke pointed out, return to the state of war.

When we consider a dissident, long oppressed minority being compelled to choose rebellion as a last resort for the redress of its grievances we confront two questions to which the answers are far from pleasant. I will close my remarks by stating these two questions for you.

Can there be a successful rebellion by a minority? Can a minority ever attain the critical mass required for carrying rebellion through to a successful conclusion?

If a minority rebellion were to succeed, would it not result in substituting minority for majority rule—and end up with an oppressed majority instead of an oppressed minority?



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